

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE SOLUTIONS
ADMINISTRATOR'S MEMO SERIES

NOTICE 03-09

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DISPOSAL DATE: Ongoing

RE: HEALTH
INSURANCE
PORTABILITY AND
ACCOUNTABILITY
ACT (HIPAA)
REGULATIONS AND
W-2

To: W-2 Agency Directors

From: Bettie A. Rodgers /s/
Division Administrator

Purpose

As the Division is moving forward with the implementation of new screening and assessment policies in the Wisconsin Works (W-2) program, questions are frequently asked about participant confidentiality and whether the collection and recording of participants' medical information meets with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This memo is to advise you that in the opinion of the Department of Workforce Development's (DWD) legal counsel, the HIPAA regulations do not apply to the W-2 program.

HIPAA Regulations

Congress recognized the need to protect the privacy of personal identifiable health information through the enactment of HIPAA. Over the last two years, the federal Department of Health and Human Services has published HIPAA regulations containing national standards for privacy of individually identifiable health information known as the Privacy Rule. The Privacy Rule protects individuals' personal health information and gives patients increased access to their medical records.

The Privacy Rule imposes certain requirements on "covered entities", which it defines as health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions electronically. It also imposes requirements on "business associates". Business associates are persons or organizations performing a function or activity on behalf of a covered entity, or providing certain legal, financial, or management services to the covered entity when the function, activity, or services involve the use or disclosure of individually identifiable health

information. The DWD legal counsel has concluded that DWD and its W-2 agencies do not come under the definitions of “covered entities” or “business associates”.

Although our legal analysis indicates that HIPAA does not apply to the W-2 program, you should consult with your W-2 agency’s legal counsel regarding HIPAA. Your legal counsel can contact Howard Bernstein, DWD legal counsel, if there are further questions regarding HIPAA and W-2.

You may review the provisions of HIPAA on the Department of Health and Human Services (DHHS) web page at www.os.dhhs.gov/. Howard Bernstein can be contacted at Howard.Bernstein@dwd.state.wi.us or (608) 266-9427.

W-2 Participant Confidentiality Requirements

While HIPAA requirements do not apply to W-2, that does not change the fact that medical information is subject to confidentiality requirements under the W-2 program. Agencies must continue to follow policies laid out in Bureau of Workforce Programs Operations Memo 00-25 to ensure that agencies maintain confidentiality of W-2 participants’ medical information. All sensitive and confidential information obtained regarding participants must be maintained in a secure confidential manner. This can be accomplished by placing the documentation in an envelope, sealing, and storing it in a file that is under lock and key and away from areas frequented by persons who would not normally need to view such information as part of their job.

The automated Barrier Screening Tool was designed to limit access to the screening information to only those agency staff within the participant’s W-2 office who are designated to have access. This may include one Main User, up to two Back-Up Users, and agency-designated Level 2 Users (generally frontline supervisors). The results of the screening should only be printed and shared with the appropriate service providers when a release of information is obtained from the participant.

REGIONAL OFFICE CONTACT: Area Administrators